IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/01/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ.

CIVIL REVISION PETITION NO.906 of 2000

V.Vairamani Ammal ... Petitioner

-Vs-

1. P.Kalyana Sundaram
2. P.Vasudevan ... Respondents

Civil Revision Petition filed under Section 115 of C.P.C. as stated therein.

!For Petitioner .. Mrs.Hema Sampath

^For Respondents .. No appearance

:O R D E R

The above Civil Revision Petition has been filed against the fair and decretal order dated 5.11.1998 made in R.C.A.No.140 of 1995 by the Court of (Rent Control Appellate Authority(Principal Subordinate Judge), Madurai thereby confirming the fair and decretal order dated 5.9.1995 made in R.C.O.P.No.90 of 1988 by the Court of Rent Controller(Principal District Munsif), Madurai.

2. Tracing the history of the case, what comes to be known is that the petitioner herein is the landlady who filed R.C.O.P.No.90 of 1988 for eviction of the respondents on the ground of owner's occupation and for demolition and reconstruction on averments such as that she let out the premises belonging to her to the respondents for running a cycle mart on a monthly rent of Rs.440/- p.m.; that at the time of filing the petition, she was carrying on the business of medicine in a rented premises; that she wanted to shift her business to her own building and carry on the same; that she issued a lawyer's notice dated 10.5.1987 to the respondents stating that she bona fide requires the premises for her own business; that further, due to acute water shortage in the building, she wanted to deepen the bore well; that since the existing bore well is situate within the petition premises and for deepening the bore well, the premises has to be demolished; that for this purpose also she needed the premises; that further, the premises is let out for non-residential purpose only and she is in need of the same to run her own

business in medicine. On such averments, the petitioner would pray for the relief extracted supra.

3. In the objection filed by the respondents before the Rent Controller, besides generally denying the allegations in the petition, they would submit that the petitioner/landlady must prove, first of all, that on the date of filing the present application for eviction, she was carrying on business in wholesale medicine at Door NO.2/32 J Raja Mill Road, Madurai Town and that she bonafide requires the petition mentioned building for locating her business; that the said building belongs to the petitioner's daughter; that no business as alleged in the petition is carried on in the said address; that the petitioner is neither experienced nor competent nor carrying on any business in her own name; that deepening the bore well can be done even without demolishing the floor; that the request of the petitioner for eviction on the ground of demolition and reconstruction is totally a misconceived one and devoid of any merit and the claim is not bonafide and the eviction sought for under these grounds cannot pass the tests of requirements as provided under the provisions of Rent Control Act and would pray to dismiss the above petition.

4. The learned Rent Controller, on the basis of the pleadings by parties, would frame 3 points on his own and would conduct a full trial in which on the side of the petitioner, she would examine one Venugopal as P.W.1 for oral evidence and would mark 17 documents as Exs.P1 to P17 for documentary evidence. Likewise, on the part of the respondents they would examine the second respondent as D.W.1 for oral evidence and would mark only one document as Ex.R1, which is the rental receipt dated 12.3.1990. The learned Rent Controller, in consideration of both the oral and documentary evidence, would ultimately dismiss the petition on ground that the petitioner did not prove the grounds for eviction.

5. Aggrieved by the fair and decretal order passed by the Rent Controller, the petitioner has preferred an appeal in R.C.A.No.140 of 199 5 on the file of the Rent Control Appellate Authority and the Principal Subordinate Judge, Madurai and the learned Appellate Authority, in consideration of the facts pleaded by the parties before the lower Court, would frame two points on his own for consideration and would discuss the same elaborately and ultimately concurring with the findings of the Rent Controller would ultimately dismiss the appeal, testifying the validity of the said judgment and decree, the petitioner has come forward to file the above Civil Revision Petition on grounds such as that the Courts below have failed to see that the respondents have denied the title of the petitioner in paragraph 4 of the statement of objections and on that short ground alone, eviction should have been ordered following the decision in AIR 1989 SC 2087; that the Courts below ought to have seen that the denial of title in the course of the proceeding itself is a ground for eviction as a tenant is estopped from denying the title under Section 116 of the Evidence Act.

6. The petitioner would further submit that the Courts below have erred in not even referring to this aspect in spite of the fact that it

had been raised by the petitioner's counsel and the written arguments submitted by the petitioner's counsel also make a reference to the same; that the Courts below have omitted to see that it is not necessary for the landlord to actually prove that he is carrying on business, but it is enough if he had taken steps to start the business; that the Courts below have overlooked the evidence of P.W.1 that she applied for licence in 1987, that it was granted only in 1995 and that without the licence the business could not be run; that the Courts below ought to have seen that Exs.A6 to A18 would show that the petitioner is carrying on business in the rented premises Door No.2/32 J; that the reasoning of the Courts below that

since the rented premises is owned by the petitioner's daughter it cannot be said that she is carrying on business in a rented premises, is perverse; that the Courts below ought to have seen that the petitioner has produced the Income-Tax returns and other necessary proofs for showing possession of necessary funds to run the business; that the Courts below overlooked Exs.A11 and A12 the licence issued by the Assistant Director of Drug Control for her business "Preethi Pharma"; that the Courts below ought to have followed the decisions in 1993-lMLJ 321, 1964-2-MLJ-89, 1977-TLNJ-499 and 98-LW-666 which lay down the law that a landlord having the capital ready and intention to do the business, cannot be said to commence his business though the activity relating to it has to await the securing of accommodation; that the Courts below failed to see that carrying on business does not necessarily mean that there is an active and business trade but it is enough if all the preparations had been made; that the finding of the Courts below that Exs.A6 to A17 are subsequent documents and that they cannot be relied on, is perverse as they clearly prove that the petitioner had taken steps long back for starting the business.

7. The further grounds of the revision petition are that the finding regarding Section 14(1)(b) is also unsustainable as the Courts below have failed to understand the contentions of the petitioner; that the Courts below ought to have seen that admittedly the bore well from which the water is supplied for the entire building is situate under the respondent's shop and the vertical pipe line from the bore well is fixed there and so to set right the bore well the portion in occupation of the respondents has to be demolished; that the Courts below erred in thinking that the entire building has to be demolished and since the petitioner had not taken steps to evict other tenants there is no bona fide; that the Courts below omitted to see that the respondents have admitted that the bore well had to be deepened; that in any event the courts below have not properly considered the oral and documentary evidence.

8. During arguments, the learned counsel appearing on behalf of the petitioner would apprise this Court that it is a non-residential building; that a concurrent finding has been rendered by the Rent Controller and the appellate authority as well, dismissing the petition filed by the petitioner and the appeal respectively; that the respondents are running cycle shop on a monthly rent of Rs.440/= and that the petitioner is running a

wholesale business in medicine in a rental building; that she also wants to deepen the bore well, for which, alteration has to be made in the ground floor, thus requiring the premises for her own occupation; that the trial Court rejected the petition on two grounds as found in Para.No.10 of the order. The learned counsel would point out that the lower appellate Court also did not give any finding of its own but has bluntly confirmed the order of the trial court and hence both the orders and the judgments of the lower courts require to be revised and the eviction has to be ordered.

9. The learned counsel would also cite the same judgments which have been cited either before the lower Court or in the grounds of appeal respectively reported in 1995-2-MLJ 67 (N.MOHAMBARAM vs. M/s.C.K.C.M.KADER SHAH AND BROTHERS REPRESENTED BY ITS PARTNER SRI C.K.C.M. KHADER SHAH) wherein it is held by a learned single Judge of this Court that "the wording occurring in Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act is 'carrying on business' meaning that the landlord should carry on his business on the date of filing of the petition". No mention need be necessary that this decision is quite against the case of the revision petition since admittedly she was only making preparation with intent to carry on the business and not actually carrying on the business which is the import of the Section.

10. The other judgments cited are respectively reported in 98-L.W.-25 (M/s.VARIETY EMPORIUM vs. V.R.M.MOHD.IBRAHIM NAINA) and (1981) 3 SCC 36 (M.M.QUASIM vs. MANOHAR LAL SHARMA AND OTHERS) wherein, according to the petitioner, the Honourable Apex Court has held that the subsequent events have to be taken note of. True, but the subsequent events alone are not meant here. On the contrary, along with the material evidence placed on record in proof of the claim of the petitioner, the subsequent events should also be taken note of, provided they are supporting the basic case put up by the petitioner on the date of petition.

11. The other judgments cited are reported in (1)1993-1-MLJ 321 (SARASWATHI alias SASIKALA vs. SYED IRAHIM), (2) 1977-T.L.N.J. 499 (MARI AMMAL vs. KANDASWAMY) and (3) 98-L.W.-666 (THIRU CHELLIAH PANDITHAN vs. TMT.ANTHONIAMMAL AND TWO OTHERS) in which, according to the petitioner, it is held that 'the requirement of the landlord having the capital ready and the intention to do business is bonafide though the activity relating to it has to await the securing of accommodation; that carrying on business does not mean that there is an active and business trade but it is enough if preparations have been made'. There is no second thought or any controversy that could be entertained in this proposition also, but the point that is relevant for consideration is 'whether such readiness and intention to do business in a bona fide manner are required on the date of filing of the petition requiring the premises or at a later point of time?' Needless to mention that only long after filing the petition, the petitioner got ready with such materials as though she was getting ready to do the business and not at the time of filing of the RCOP and therefore the lower Courts have every reason to reject not only Exs.A.6 to A.17 but also particularly Exs.A.11 and A.12 which are all the preparations long after the filing of the petition which cannot go to show that on the date of filing of the application, the petitioner has made such

preparations or had the intention to do the business of that nature.

12. It is pathetic to note that no appearance has been made on the part of the respondent/tenant and therefore this court is left with no choice but to decide the above Civil revision petition in due consideration of the materials placed on record and upon hearing the learned counsel for the revision petitioner. In short, it is a case of the landlord requiring the premises for doing her own business and to demolish the present building for the purpose of deepening the bore well which is the source of water for not only the premises occupied by the respondent but also to the other portions of the building, thus seeking the eviction of the lawful tenant, who is said to be running a cycle shop in the said premises.

13. The monthly rent of the building is admittedly Rs.440/= and so far as the payment of monthly rents are concerned, there is absolutely no controversy. However, the landlord has filed a petition praying to evict the tenant on grounds of personal occupation and for demolition of the building for deepening the bore well.

14. A careful perusal of the concurrent decisions of the Rent Controller and the appellate authority as well would reveal that the said authorities having entertained the petition and the appeal on their file respectively have conducted the enquiry in the manner required under law, not only following the procedures established by law but also affording due opportunity for parties to be heard before them. Even regarding these legal compliances, the revision petitioner has nothing to offer. But, the case of the petitioner is resting entirely on facts and the circumstances encircling the relevant provisions of law concerned with the landlord requiring the premises for running her own business and to deepen the bore well for which purpose and hence according to her, the premises occupied by the respondent has to be demolished. Oral and documentary evidence have been let in on both sides following the points framed by both the Courts for consideration and they have also been taken up for proper consideration for the decisions to be arrived at in full appreciation of the evidence placed on record.

15. The grievance of the petitioner is that even though vital documents have been submitted on the part of the petitioner in Exs.A.6 to A.17 particularly Exs.A.11 and A.12, they have not been properly appreciated by the lower Courts since according to them they have been got ready with subsequent to the date on which the Rent Control Original Petition has been filed before the Rent Controller. Since the question that is to be dealt with is whether the landlord was actually running a business of that sort as required under Section 10(3)(a)(iii) or at least had all the preparations and the bona fide intention to start the business on the date of petition, which according to the lower Courts are not present and only long after the date of Rent Control Original Petition they have been got ready with for the purpose of the trial and therefore they have every reason to reject those materials put forth on record. On the contrary, the claim of the petitioner is that according to the propositions held by different upper forums of law, even the subsequent events have to be taken note of while deciding the question of such nature as one in hand and the lower Courts did not give vent to these propositions while

deciding the matter of eviction of the tenant on such requirements.

16. Though it is true that the subsequent events should also be taken note of, it cannot be said that only based on such subsequent events shown, much less in an artificial fashion, the case has to be decided throwing to winds the vital question 'whether on the date of filing of the application, to the pleadings, the petitioner/landlord was having the required arrangements or qualifications so as to seek eviction'. Therefore, it could be safely decided that to consolidate the case put forth by the petitioner when he chose to come before the Court seeking the remedy, the case could not be decided only on the subsequent events and therefore this Court is not able to see any irregularity or legal infirmity or inconsistency having crept into the acts of rejection of such evidence by the Courts below since they came up subsequent to the date of application and were absenting on the date of application. Therefore, it is hereby held that only subsequent events cannot justify the case of the petitioner seeking eviction and there is nothing wrong in the appreciation of evidence by the trial Court and the appellate Court as well.

17. While the petitioner has failed to establish her case seeking eviction for running her personal business, even for the other ground offered seeking to demolish the building for deepening or expanding the bore well, no strong case has been put up since it is common knowledge that the bore wells are either erected or deepened only in the hydrolic method making use of powerful tubes from the instruments mounted on the heavy vehicles which need not even be taken nearer to the building and therefore demolition of the building for such deepening or expanding the existing bore well is not at all necessary and hence on this ground also, the petition has to necessarily fail and the same is decided accordingly.

18. In short, neither the petitioner has established her case for eviction of the lawful tenant from the premises in question on those grounds offered in the Rent Control Original petition followed by the appeal nor could it be said that the lower Courts have committed any error apparent on the face of the orders passed by them or any serious legal infirmity or inconsistency having crept into the orders or could even the appreciation of evidence be held as perverse. Therefore, this Court is of the view that there is no proper or tangible reason on the part of this Court to cause its interference into the well considered and merited order and judgment passed by the Rent Controller and the Appellate Authority respectively and hence the following order:

In result,

(i)the above civil revision petition does not merit acceptance and becomes liable to be dismissed and is dismissed accordingly.

(ii)The judgment and decree dated 5.11.1998 rendered in R.C.A.No.140 of 1995 by the court of Rent Control Appellate Authority (Principal Subordinate Judge) Madurai thereby confirming the fair and decretal order dated 5.9.1995 made in R.C.O.P.No.90 of 1988 by the Court of Rent Controller (Principal District Munsif), Madurai is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes

gr/Rao

To

1.The Principal Subordinate Judge,
Madurai.

2.The Principal District Munsif,
Madurai.